IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 4 OF 2006

Silbert @ Subart D'Souza,
Son of Joaquim D'Souza,
Major, resident of H.No.324,
Godinho waddo, Salcete, Goa. ... Applicant

versus

1. State
(Colva Police Station)

2. Public Prosecutor,
Margao-Goa. ... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Ms. K. Sambari,
Advocate for the Applicant/Accused.

Ms. W. Coutinho, Public Prosecutor for the Respondent/State.

CORAM : N. A. BRITTO, J.

DATE : 23RD FEBRUARY, 2006.

ORAL ORDER

Heard Mr. S. D. Lotlikar, the learned Senior Counsel on behalf of the applicant/accused and Ms. W. Coutinho, the learned Public Prosecutor on behalf of the respondent.

2. The applicant/accused was convicted by the trial Court under Sections 326, 341 and 506(ii) I.P.C. On appeal being filed, the learned Sessions Judge allowed the appeal partly upholding the conviction under Sections 326 and 341 I.P.C. The learned Sessions Judge acquitted the accused under Section 506 (ii) I.P.C. The allegation against the applicant was that on 23-3-2003 at about 3.00 p.m. at Utorda, he had wrongfully restrained Mr. Austin Jose Pereira, Francis Estibeiro and Miss Daria Estibeiro who were going on a scooter and thereafter caught hold of Miss Daria and took her a little away and then caught hold of her hair and forcibly put some liquid deleterious substance in her mouth and closed the same forcibly and thereafter gave her a fist blow on her face. In support of the charge, prosecution had examined 14 witnesses and after considering the evidence led by the prosecution the learned trial Court convicted the accused as aforesaid. The only point raised in this revision is that Section 326 I.P.C. was not attracted to the facts of the case. It appears that this was raised before the learned Sessions Judge and has been dealt with by the learned Sessions Judge in para 12 of the Judgment dated 12-1-2006. In considering the said plea raised on behalf of the accused the

learned Sessions Judge has referred to the medical evidence. From the evidence produced by the respondent/State, it appears that after the incident, PW2/Daria was first taken to Hospicio Hospital, Margao on the same day and she was referred to Goa Medical College for expert management of the injuries suffered by her. At the Goa Medical College, she was examined by PW6/Dr.Rajesh Patil and as per Dr. Patil, PW2/Daria was not given food orally for about 6 to 7 days and was given intra venial fluids only. According to PW6/Dr. Patil, the esophagus and the stomach of PW2/Daria were not perforated. There is no dispute that PW2/Daria got discharged from Goa Medical College on 5-4-2003 against medical advice and then was admitted on 7-4-2003 at Apollo Hospital at Cuncolim and was discharged on 12-4-2003 but again was re-admitted on 15-4-2003 and was treated by PW11/Dr. Nalin Gosalia from 19-4-2003 for corrosive burns for the entire food pipe/esophagus. PW11/Dr. Gosalia had deposed that PW2/Daria had started vomitting on 27-5-2003 and was admitted and again discharged on the following day and re-admitted again on 30-5-2003. The evidence of PW11/Dr. Gosalia shows that PW2/Daria was re-operated and thereafter on 17-6-2003 dilatation of the food pipe was attempted and the

same was again done on 1-7-2003 and 15-7-2003 and on 15-7-2003 whilst dilatation was being attempted PW2/Daria had a complication in the form of the rupture of the food pipe and she was re-operated and was kept in the Intensive Care Unit. PW11/Dr. Gosalia had also stated that on 25-8-2003 PW2/Daria underwent major surgery of anterior mediastinum etc. lasting for 9 hours and thereafter the patient was shifted to the ward on 30-8-2003. Considering the medical evidence of the said Medical Officers the learned Sessions Judge came to the conclusion that the case of the prosecution was indeed covered by clause eighthly of Section 320 I.P.C. Clause Eighthly provides that any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits shall be designated as grievous hurt.

3. Mr. S. D. Lotlikar, the learned Senior Counsel on behalf of the applicant/accused submits that the discharge summary and the certificate which were produced at Exhs.48 and 49 could not have been produced because PW11/Dr. Gosalia was not the author of the same. In my view, this objection is belated,

the same having not been raised either before the trial Court or before the first appellate Court. It appears that the said certificates Exhs.48 and 49 were produced without any murmur or demur on the part of the accused and PW11/Dr. Gosalia has deposed on the basis of the same. Mr. Lotlikar next submits that PW2/Daria was got discharged on 5-4-2003 against medical advice and, therefore, the accused could not be held responsible for what intervened inbetween till she was admitted after a lapse of two days in Apollo Hospital at Cuncolim on 7-4-2003. In my view, this submission also cannot be accepted. Apparently, PW2/Daria was throughout treated for the injuries suffered by her due to esophagus/food pipe and the stomach sustained by her consequent to the accused having forced her to swallow a deleterious substance. If at all she got discharged on 7-4-2003 that was with a view to be taken to Apollo Hospital where she was treated regularly and thereafter continuously from at least 3-5-2003 till 30-8-2003 when she was removed to the ward of the said Apollo Hospital. The very fact that the said PW2/Daria was continuously in the hospital and at times in the Intensive Care Unit one can only presume that during the said period she was unable to follow her ordinary pursuits in life that being one

of the requirements in Clause eighthly to constitute an offence under Section 320 I.P.C. I am, therefore, not inclined to accept the submission of Mr. Lotlikar, the learned Senior Counsel that based on medical evidence there is scope to reduce the conviction from Section 326 to 324 I.P.C.

4. In view of the above, there is no merit in this revision application and, therefore, the same is hereby dismissed.

N. A. BRITTO, J.

RD